

Message

From: Hurlid, Kathy [Hurlid.Kathy@epa.gov]
Sent: 12/1/2020 7:19:02 PM
To: Beck, Whitney [beck.whitney@epa.gov]
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Yes, they are unfamiliar (as are we) but still trying to put the square peg in the round hole. 😊

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Tuesday, December 1, 2020 2:16 PM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

I was going to call Mike T. and just ask him if we can tell Darryl we're waiving the milestones but then saw Christine's response which implies we have to wait. Oh well. I am impressed & grateful that Katherine got a meeting scheduled so quickly.

From: Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Sent: Tuesday, December 1, 2020 2:15 PM
To: Beck, Whitney <beck.whitney@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Yes, think 401 and WOTUS rules. Much was waived!

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Tuesday, December 1, 2020 2:12 PM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Subject: FW: Early Draft of Florida CWA 404 Good Cause Final Rule

FYI... I read some ADP materials saying we can waive milestones so one other question to ask about tomorrow.

IO told us to put our rule in the tracker so we did (insert shrug emoji here)

From: Ruf, Christine <Ruf.Christine@epa.gov>
Sent: Tuesday, December 1, 2020 2:08 PM
To: Adams, Darryl <Adams.Darryl@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>
Cc: Beck, Whitney <beck.whitney@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

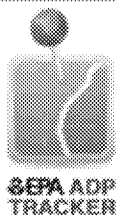
Thanks Darryl, we're working with Whitney and others in OWOW to clarify this action. We've been told it's a good cause rule, I am not familiar with those, and that it doesn't need to go into the Reg agenda. We'll work to get the most accurate info in tracker ASAP. Thanks. Christine

From: Adams, Darryl <Adams.Darryl@epa.gov>
Sent: Tuesday, December 01, 2020 2:01 PM
To: Trombley, Michael <Trombley.Michael@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Cc: Beck, Whitney <beck.whitney@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Whitney et al,

Let me know if you need any help tiering this action. It looks like the milestone information still needs to be filled in. If you could this done today, I'll include it in Dec.'s tiering that I send out tomorrow.

Darryl



Agency Action

Codifying EPA's Adjudicatory Decision on Florida's Clean Water Act
Section 404 Program Request
SAN: Not Assigned | RIN: Not Assigned
OW/OWOW/OWCD
Regulation - Tier 3 (proposed)
OMB:

Action Information

TRACKER Status: Draft

SAN: Not Assigned

RIN: Not Assigned

Action Type: Regulation

AAShip: OW

Office: OWOW

Division: OWCD

Branch:

Working Title: Codifying EPA's Adjudicatory Decision on Florida's Clean Water Act Section 404 Program Request

Full Title: Codifying EPA's Adjudicatory Decision on Florida's Clean Water Act Section 404 Program Request

Tiering

Tier Status: Proposed

Tier Level: 3

From: Nurse, Leanne <Nurse.Leanne@epa.gov>
Sent: Tuesday, December 01, 2020 1:54 PM
To: Manibusan, Mary <Manibusan.Mary@epa.gov>
Cc: Adams, Darryl <Adams.Darryl@epa.gov>
Subject: Fw: Early Draft of Florida CWA 404 Good Cause Final Rule

fyi

From: Beck, Whitney <beck.whitney@epa.gov>
Sent: Tuesday, December 1, 2020 1:51 PM
To: Nurse, Leanne <Nurse.Leanne@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>
Cc: Hurlld, Kathy <Hurlld.Kathy@epa.gov>
Subject: RE: Early Draft of Florida CWA 404 Good Cause Final Rule

Thanks Leanne! Just to keep you in the loop, here's what we've been working on. Feel free to call anytime if you or your management have questions for us.

- Get this action tiered with OP AA approval

- We've filled out a tiering form proposing Tier 3 and have added our rule to the ADP tracker; we're hoping the rule will get tiered in the December tiering round.
- Submit a Non-significance determination request in ADP tracker under the "OMB determination" milestone and also send the NSD request as a Word document attachment to the desk officer (me), cc Darryl Adams (tiering coordinator).
 - We've developed a NS determination which has been approved by our office director, and we are meeting with OW IO tomorrow to discuss the process for getting Dave Ross approval. After his approval, we'll upload into the ADP tracker and send an email as requested.
- Submit a EO 13771 3C waiver for not having been published in the Reg Agenda [I'll discuss with Mary tomorrow]
 - I believe this is folded into the NS determination form that Darryl provided last week, as we did fill out a justification statement for the waiver in that form.

From: Nurse, Leanne <Nurse.Leanne@epa.gov>

Sent: Tuesday, December 1, 2020 1:35 PM

To: Beck, Whitney <beck.whitney@epa.gov>; Grossarth, Shari <Grossarth.Shari@epa.gov>

Cc: Hurlid, Kathy <Hurlid.Kathy@epa.gov>

Subject: Re: Early Draft of Florida CWA 404 Good Cause Final Rule

Whitney,

This is some preliminary feedback (apologies for duplicating information you may already have). You need to:

- Get this action tiered with OP AA approval
- Submit a Non-significance determination request in ADP tracker under the "OMB determination" milestone and also send the NSD request as a Word document attachment to the desk officer (me), cc Darryl Adams (tiering coordinator).
- Submit a EO 13771 3C waiver for not having been published in the Reg Agenda [I'll discuss with Mary tomorrow]

From: Beck, Whitney <beck.whitney@epa.gov>

Sent: Tuesday, December 1, 2020 12:41 PM

To: Grossarth, Shari <Grossarth.Shari@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>

Cc: Hurlid, Kathy <Hurlid.Kathy@epa.gov>

Subject: Early Draft of Florida CWA 404 Good Cause Final Rule

Hi Shari and Leanne,

As I mentioned last week, OW is planning to issue a final rule if EPA approves Florida's request to assume a CWA section 404 program. The final rule just got entered into the ADP tracker last week and doesn't even have a SAN- but it's called "Codifying EPA's Adjudicatory Decision on Florida's Clean Water Act Section 404 Program Request."

EPA has to make a decision by December 17, and R4 will submit a (non-rulemaking) FRN communicating that decision. OW would like to issue the final rule ASAP after that decision. The final rule would be issued without notice and comment for good cause (we've been in contact with Mary on good cause rules), and we're routing a non-significance determination to OP soon (we've been in contact with Darryl & Leanne).

Because of the quick timeframe, we wanted to provide a VERY EARLY DRAFT FRN sooner than later to get your feedback. You'll see some comments for the OW/R4 FL team (still getting their feedback!) but also some sections where I particularly wanted to get early OP feedback. For instance, we know the E.O. & Statutory requirements section is different for good cause final rules. The good cause guidance that Mary provided has some limited information about

how to structure that section. We did find an example good cause rule from 2015 that I used as a template (attached), and I'm curious to know if anything looks like it's missing?

I also wanted to make sure we're on the right track with the reg text formatting (I know we can perfect later since OW will still have more edits...).

Please let me know what questions I can answer, and if you need additional information.

Best,
Whitney

Whitney Beck, Ph.D.
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